

STATE OF VERMONT  
PUBLIC SERVICE BOARD

Docket No. 7527

Petition of Telephone Operating Company of       )  
Vermont, LLC, d/b/a Fairpoint Communications,   )  
to construct wireless broadband facilities       )

Order entered: 8/27/2009

**PREHEARING CONFERENCE MEMORANDUM AND ORDER RE: INTERVENTION**

On August 11, 2009, I conducted a prehearing conference in this docket. One of the primary purposes of the prehearing conference was to identify parties in the case. The following persons participated in the prehearing conference: Peter Zamore, Esq., Sheehy Furlong & Behm, PC, for Telephone Operating Company of Vermont, LLC, d/b/a Fairpoint Communications ("Fairpoint"); Jeanne Elias, Esq., for the Vermont Department of Public Service (the "Department"); Jared Margolis, Esq., for the Meadows Edge Bixby Hill Homeowner's Association, Inc. (the "Association"); and Michael Steeves, Esq., for the Agency of Natural Resources ("ANR").

**Intervention**

The Board has received motions to intervene in this docket from the Association and from Milton residents, Deborah and Will Rose. A request to intervene was also made by ANR at the prehearing conference. No objections to ANR's request to intervene were raised and the request was granted. As discussed below, I grant permissive intervention to the Association and deny the Rose's request for intervention.

**Criteria for Intervention**

The standards for intervention appear in Board Rule 2.209. Under Rule 2.209(A), persons may seek to intervene "as of right." That provision authorizes intervention as of right where any of the following conditions are met: (1) a statute confers an unconditional right to intervene; (2) a statute confers a conditional right to intervene and the condition or conditions are satisfied; or (3) "when the applicant demonstrates a substantial interest which may be adversely

affected by the outcome of the proceeding, where the proceeding affords the exclusive means by which the applicant can protect that interest and where the applicant's interest is not adequately represented by existing parties."

Permissive intervention is allowed under Board Rule 2.209(B):

Permissive intervention. Upon timely application, a person may, in the discretion of the Board, be permitted to intervene in any proceeding when the applicant demonstrates a substantial interest which may be affected by the outcome of the proceeding. In exercising its discretion in this paragraph, the Board shall consider (1) whether the applicant's interest will be adequately protected by other parties, (2) whether alternative means exist by which the applicant's interest can be protected, and (3) whether intervention will unduly delay the proceeding or prejudice the interests of existing parties or of the public.

Intervener participation before the Board may also be conditioned by the Board pursuant to Board Rule 2.209(C):

Conditions. Where a party has been granted intervention, the Board may restrict such party's participation to only those issues in which the party has demonstrated an interest, may require such party to join with other parties with respect to appearance by counsel, presentation of evidence or other matters, or may otherwise limit such party's participation, all as the interests of justice and economy of adjudication require.

#### The Roses' Motion

The Roses' motion raises concerns regarding the potential impacts associated with the construction of additional towers in this area.<sup>1</sup> The Roses state in their motion that any subsequent facilities proposed for this location be required to collocate on existing towers. However, the Roses' motion does not raise any concerns regarding the tower that is the subject of this docket. Therefore, the Roses have not demonstrated a substantial interest that may be affected by the outcome of this proceeding and, accordingly, their motion to intervene is denied.

---

1. The Roses have received a 45-day notice, pursuant to 30 V.S.A. 248a(e), from Omnipoint Communications, Inc., d/b/a T-Mobile, regarding a proposal to locate a telecommunications tower at a nearby site. Omnipoint has not filed a petition for approval of this project with the Board.

The Association's Motion

The Association consists of over one hundred residents of the Meadows Edge housing development located in Essex, Vermont, near the proposed Bixby Hill tower site. In its motion to intervene ("Motion"), the Association seeks intervention based on (1) the aesthetic impacts of the project in relation to its members' properties, other areas in the town, and recreational uses of the area, and (2) the need for the project. The Association argues that in addition to the direct impacts on the Meadows Edge development, the project will be visible from "several historic landmarks" and other areas in town. The Association also argues that the project will impact recreational use of the tower site by its members. Finally, the Association argues that some homes in the projected coverage area of the project may already have broadband service and, therefore, the project may not be necessary.

On August 13, 2009, Fairpoint filed a response to the Motion. Fairpoint does not oppose granting the Association intervention with respect to aesthetic impacts on the Meadows Edge development. Fairpoint opposes granting the Association intervention on the other grounds cited. Fairpoint argues that the Association's generalized interests in the aesthetic impacts of the project on other areas of the town, recreational uses of the site, and the need for the project, are no different from any other resident of Essex. Therefore, Fairpoint argues, the Association has not demonstrated a specific and particularized interest on which to grant intervention.

In its Motion, the Association argues that many of its members live in close proximity to the proposed project location on Bixby Hill and will be directly affected by any adverse aesthetic impacts created by the project. Therefore, the Association has demonstrated a particular substantial interest which may be affected by the outcome of the proceeding. Accordingly, the Association is granted permissive intervention with respect to the aesthetic impact of the project on the Meadows Edge housing development.

With respect to the other grounds for intervention raised by the Association, I conclude that these represent generalized concerns that can be adequately addressed by other parties in the proceeding. The Department has conducted its own aesthetic analysis of the project on the surrounding area and can, therefore, adequately address aesthetic impacts on other areas of the town. The Department also has the expertise necessary to address issues associated with the

need for the project. Therefore, the Association's request for intervention with respect to aesthetic impacts of the project on other areas in the town, recreational uses of the project site, and the need for the project, is denied.

**Scheduling**

Parties shall jointly agree to a schedule for the remainder of this proceeding within two weeks of the date of this Order. If the parties cannot reach agreement on a mutually acceptable schedule, parties shall file separate schedules. In the filing, parties should address the need for a public hearing and set a deadline for intervention as part of the schedule.

**SO ORDERED.**

Dated at Montpelier, Vermont, this 27<sup>th</sup> day of August, 2009.

s/Gregg Faber  
Gregg Faber  
Hearing Officer

OFFICE OF THE CLERK

FILED: August 27, 2009

ATTEST: s/Susan M. Hudson  
Clerk of the Board

*NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: psb.clerk@state.vt.us)*